

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****REGION 8****999 18<sup>TH</sup> STREET - SUITE 300****DENVER, CO 80202-2466****<http://www.epa.gov/region08>**

February 16, 2001

Ref: ENF-L

**BY FACSIMILE AND U.S. MAIL**

John D. McCarthy, Esq.  
Holme Roberts & Owen LLP  
1700 Lincoln Street, Suite 4100  
Denver, CO 80203

Dear Jay:

This is in response to your February 7, 2001 letter regarding settlement of the above-referenced matter. We, too, are disappointed that the mediation before Judge Leavy proved unsuccessful. As you will recall, the United States offered the majority of the proposals discussed during mediation in an effort to obtain access to certain KDC Properties to address the release and threatened release of asbestos at Grace's former screening plant. In fact, the United States made several proposals to Grace and KDC that represent substantial compromises compared to the cleanup authorities granted to EPA in Section 104 of CERCLA, 42 U.S.C. § 9604. Nevertheless, in an effort to resolve this dispute quickly and move on with cleanup activities, we are responding today to your latest offer.

EPA appreciates your offer to remove the stockpiled material from the Parker property. EPA is willing to negotiate an enforceable consent order with Grace under which EPA would complete removal activities on the property, including restoration, while Grace would transport the removed material to the mine for disposal. Since your letter emphasizes that Grace/KDC's participation would be "at no cost to the EPA", we assume that the consent order would include a waiver of any future reimbursement claim from Grace or KDC.

EPA will not provide Grace with a covenant not to sue for the materials transported and disposed of pursuant to the previous paragraph. Grace owned and operated the Parker property from 1963 until 1994, many more years than the Parkers have. Unlike the Parkers, Grace has not provided any detailed information about the hazardous substances Grace used on the property, other than asbestos in vermiculite. Absent confirmed information about Grace's pesticide usage, waste oil disposal, etc., EPA will not place Superfund money at risk for contamination for which Grace may be liable. The Superfund has limited dollars for use at sites where there are no liable parties to pay for cleanup.



EPA is also appreciative of your offer of top soil and backfill for the Parker property restoration. However, Grace has not provided EPA with any information about the characteristics of the soil or backfill, including, for example, whether these materials are free of asbestos. Until more information is made available, we cannot respond to your offer.

Grace's offer to perform response actions on the Kootenai Bluffs and Kootenai Flyway properties is acceptable if performed under an approved work plan and administrative order on consent. EPA has performed a preliminary evaluation of the work plan that Grace provided last fall and has determined that it is not sufficiently protective of public health. However, EPA would be happy to work with Grace to develop an acceptable work plan. An enforceable order is the normal means by which EPA ensures that work is performed correctly and safely. Grace's repeated statement that it believes there is no threat presented by the asbestos and that no remediation is necessary makes this assurance even more important. Once again, since Grace has indicated that this offer is at no cost to the EPA, it is assumed that the consent order would include a waiver of any potential reimbursement claim.

Finally, Grace has requested that we dismiss with prejudice EPA's access case, including the claim for penalties. EPA will dismiss the action after access has been provided and an appropriate penalty paid. The purpose of the penalty is to deter future conduct which would diminish EPA's efforts to protect the health of Libby's citizens. As Grace is publicly discussing bankruptcy, EPA wishes to avoid directing scarce Grace funds away from mitigation of Grace-caused health problems in Libby. Therefore, EPA is willing to apply its Supplemental Environmental Projects guidance to direct a majority of the penalty amount to a non-profit organization for provision of health care to those in Libby suffering from asbestosis or mesothelioma.

I would like to remind you that any funds being expended in Libby are being spent because of the contamination caused by Grace. Indeed, it is true that our budget has increased in Libby, but mostly because of Grace's and KDC's failure to provide access for performance of the removal. In addition, the area which EPA is evaluating for a potential asbestos cell at the landfill is four to six acres in size, not forty, and will be used for a landfill expansion in the next ten years whether EPA builds an asbestos cell or not. Finally, your NEPA concern is misplaced. EPA is currently evaluating the landfill asbestos cell as an alternative, just as EPA has evaluated the mine or the Spokane disposal facility. If chosen as the next best alternative to the mine, which can't be used because of the denial of access, EPA will apply applicable and relevant or appropriate requirements to the extent practicable, in accordance with the law. In addition, EPA has and will continue to inform the public of our deliberations and receive comment from the public on any concerns related to the potential asbestos cell.

EPA would like to continue discussions on this offer, so please contact me at your earliest convenience to schedule such a discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Cohn", written in a cursive style.

Matthew Cohn  
Legal Enforcement Program

cc: James Freeman, Esq.  
Paul Peronard

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\*\*\* TX REPORT \*\*\*  
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## FACSIMILE COVER SHEET

TO: Jay McCarthyAgency/Company: Holme Roberts

City: \_\_\_\_\_ State: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number 303 866 - 0200Number of Pages (Including Cover Sheet) 4

## LEGAL ENFORCEMENT

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FROM: Matt CohnSENDER'S PHONE#: 303 312-6853

COMMENTS: \_\_\_\_\_